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Final Case Study for the National Scenic Byways Study

Scenic Roads in New York State

Scenic **BYWAYS**



September 1990

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Final Case Study
for the
National Scenic Byways Study

SCENIC ROADS in NEW YORK STATE

SEPTEMBER 1990

Prepared for
The Federal Highway Administration

Submitted by
Heritage Task Force for the Hudson River Valley, Inc.

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Supplemental Documents (available from the Federal Highway
Administration or directly from the
Heritage Task Force for the Hudson River
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SD--A:	Scenic Road Maps
SD--B:	Article 49 of the NYS Environmental Conservation Law
SD--C:	"A Heritage for All Time" (Executive Summary of the Hudson River Valley Study, 1979)
SD--D:	Scenic Road Evaluation Sheet (Heritage Task Force)
SD--E:	Visual-Landscape Unit Assessment Worksheet (Heritage Task Force)
SD--F:	Scenic Assessment and Survey Method: An Assessment Method for Scenic Road Designations (Heritage Task Force)
SD--G:	Organization & Delegation Memorandum #85-37 -- Department Policy and Procedures for the Statewide Scenic Roads Program (DEC)
SD--H:	Preserving New York State Scenic Roads: A Guide to Designation (DEC)
SD--I:	Scenic Roads Evaluation Form (DEC)
SD--J:	State of New York Designated Scenic Roads
SD--K:	Scenic Roads: Maintenance Guidelines (Heritage Task

Force, 1983)

- SD--L: "I Love New York" Tourism Map
- SD--M: Section 342-f of the NYS Highway Law ("Seaway Trail" Designation)
- SD--N: Town of Pawling -- Resolution Regarding Designation of Town Scenic Road
- SD--O: Town of Clinton Designates Historic Roads
- SD--P: Scenic Roads Handbook (Heritage Task Force, 1985)
- SD--Q: Roadscape Guidelines (Dutchess Roadside Council, 1989)
- SD--R: Scenic Road Management Guidelines (Town of Rhinebeck, March 1990)
- SD--S: Scenic Roads -- Getting There Can Be Part of the Fun (Michael Barylski, DEC, in "The Conservationist", September-October 1989)
- SD--T: Background on the Heritage Task Force for the Hudson River Valley

I. Introduction

This report focuses on the development of the New York State Scenic Roads Program pursuant to Article 49 of the Environmental Conservation Law of New York State. The program is traced from its origins in the State Natural Beauty Commission in the 1960's through to its present implementation by the Department of Environmental Conservation.

This report was prepared pursuant to a contract with the Federal Highway Administration in furtherance of a study of a National Scenic By-Ways Program. The Heritage Task Force gratefully acknowledges the comments and contributions of Michael K. Barylski, Charles C. Morrison and J. Winthrop Aldrich of the Department of Environmental Conservation, Loretta Simon of the Department of State, Sheryl Woods of the Department of Economic Development, Alan Bloom and Richard Peters of the Department of Transportation, and Carol Sondheimer of Scenic Hudson, Inc.

II. Origins, Development and Implementation

State Natural Beauty Commission

The 1960s were years of significant nationwide interest in scenic beauty. At the national level direction was provided by the President's Council on Outdoor Recreation and Natural Beauty. In New York State the first steps were taken towards a scenic roads program with a five year study of the feasibility and desirability of establishing a scenic highway system. The result was a favorable report to the Governor in 1966. The State Natural Beauty Commission was created in the same year.

In 1968 the Natural Beauty Commission, which included ten State agencies as members and was established within the State Office for Local Government, undertook an ambitious program to identify scenic areas and highways in all 67 counties in the state. Each county was asked to identify five (5) areas or sites in conjunction with State highways that demonstrated outstanding scenic appeal. The counties were encouraged to pick areas that reflected a variety of settings (i.e., not all shoreline areas).

Scenic roads committees were created in 52 counties. Thirty-five (35) counties nominated areas and sites that were endorsed by the county legislature (or county board of supervisors). Before being considered for designation by the Natural Beauty Commission, the nominations were referred for field checking to ten regional subcommittees organized around the ten regional sub-offices of the New York State Department of Transportation (DOT). Each of the regional subcommittees was chaired by the DOT regional director. The Natural Beauty Commission, with the participation of its member State agencies, was ready to make designations after reviewing the recommendations of the 10 regional sub-committees.

In July of 1970, before any designations were made, the Natural Beauty Commission was abolished and its program responsibilities were folded into the new Department of Environmental Conservation (DEC). This action was part of a larger state agency reorganization. In the course of these events, the designation process initiated by the Natural Beauty Commission was laid to one side. Two years later, in 1972, the legislation authorizing the designation of scenic areas and roads -- originally passed in 1966 (Chapter Laws 828) -- was recodified in Article 49 of the new Environmental Conservation Law. (See SD--B.) However, in terms of instituting a program across New York State, there was no follow-up to the Natural Beauty Commission's inventory.

Hudson River Valley Study

In 1978, pursuant to an act of the New York State Legislature, the Department of Environmental Conservation (DEC) undertook a study of the scenic, ecological and recreational attributes of certain sections of the shoreline of the Hudson River between Albany and New York City. One of the recommendations emanating from that study was that DEC should exercise its authority under Article 49 of the Environmental Conservation Law (ECL) in order to designate scenic roads in the Hudson Valley. (SD--C is a copy of the Executive Summary of the study, entitled "A Heritage for All Time".) The study included a general survey of candidate roads within the study area. The study also recommended the formation of a Heritage Task Force for the Hudson River Valley to follow up on the study's recommendations, including the recommendation to designate scenic roads.

Hudson Valley Scenic Roads Program

In 1980 the Commissioner of DEC, pursuant to a gubernatorial directive, created the Heritage Task Force for the Hudson River Valley. One of the Task Force's first programmatic objectives was to encourage the designation of scenic roads. Like the Natural Beauty Commission, the Task Force began by working in cooperation with counties -- eight counties along the Hudson River corridor. A form (see SD--D) was devised to evaluate highway corridor resources and small grants were provided to county planning departments to do the initial evaluation work. All of the roads surveyed were in close proximity to the Hudson River. Some of the roads originally recommended to the Natural Beauty Commission were recommended once again in the context of this second effort.

The Task Force reviewed the county recommendations by field-checking the corridors and then assessing them using the assessment worksheet (SD--E). (The methodology is described in some detail in SD--F.) Nominated roads were broken down into three categories: "Class A Scenic Road Corridors", which demonstrated exceptional scenic quality; "Class B Scenic Road Corridors", which reflected a "somewhat lower degree" of scenic quality; and "Class C Scenic Road Corridors", which served as important connectors between Class A and/or B roads. The classifications were arrived at by applying a point system built into the assessment worksheets.

Before any nominations were made to DEC an effort was made to gain the support of local governments whose jurisdictions were traversed by proposed scenic roads. The scenic road designation effort was described at public meetings in each municipality using slide shows and maps. In addition, the support of other local groups and regional public interest organizations was solicited. Some of these groups -- such as Scenic Hudson, Inc. -- worked in their turn to develop local understanding of the proposed scenic

roads designations. Interested municipalities adopted resolutions of support.

A total of approximately 350 miles of roads were nominated to DEC in 1983.

DEC's Statewide Scenic Roads Program

After receiving the 350 miles of nominations sponsored by the Heritage Task Force, DEC staff field-checked the nominated roads and evaluated them against criteria developed by the Department. In the Fall of 1985 a designation ceremony was held at which 79.8 miles of roads were designated as State Scenic Roads pursuant to Article 49 of the ECL.

In formulating its review criteria and in making the initial scenic roads designations DEC rejected the three tiered classification system proposed in the nominations. Instead DEC insisted on a uniformly strict standard keyed only to the quality of the resource.

DEC's scenic roads designation policy is set forth in the Department's "Organization & Delegation Memorandum #85-37 -- Department Policy and Procedures for the Statewide Scenic Roads Program" (hereafter referred to as the "Scenic Roads O&D Memo") (see SD--G). In addition to establishing basic criteria for evaluating scenic road nominations, the Scenic Roads O&D Memo also describes the goals and structure of the State Scenic Roads Program under Article 49 of the ECL.

The Scenic Roads O&D Memo sets forth three goals for the program:

1. Protect, preserve and enhance the natural and man-made scenic beauty of New York State;
2. Promote awareness and appreciation of the State's scenic, ecological, cultural and historical attributes; and
3. Provide economic benefits through increased tourism and improved property values.

DEC's role in achieving these goals is focused primarily on designating State Scenic Roads. The nomination process and the follow up to designation are structured around local participation:

"The program will depend heavily on the initiative of landowners and local governments in exercising their option to participate in this intergovernmental program. Understanding, support, and acceptance of the program at the local level is essential if progress is to be made in protecting, preserving and enhancing the natural and

cultural attributes of the highway corridor, both within and beyond the highway right-of-way." (Scenic Roads O&D Memo, p.2.)

Under this "bottom up" approach scenic road nominations are generally intended to be initiated by local governments or other interested local groups. The nominations should consist of maps, pictures, scenic quality assessment and evaluation forms, and narrative descriptions. Taken as a whole the nomination should quite thoroughly document the scenic quality of the nominated road. To simplify and facilitate nominations DEC published a "Guide to Designation" in 1989. (See SD--H.) The "Guide" includes a revised Scenic Roads Evaluation Form (see SD--I).

Pursuant to the Scenic Roads O&D Memo, DEC evaluates nominations based on three basic criteria:

1. The road, immediate right-of-way and views from it should exhibit exceptional compositional merit.
2. The road must provide travellers a substantial opportunity to view and appreciate the distinctive cultural, historic and/or geomorphic features of the region it traverses.
3. There must be a demonstration of significant public support for the designation. Ordinarily this has meant the adoption of a supporting resolution by the local government(s) through whose jurisdiction the road passes.

After a road is designated protection responsibility rests largely with local governments and concerned organizations. DEC encourages, but does not require, the development of management plans to provide a long term protection strategy for designated roads. A full range of land use management techniques is available to local governments (see Section III below). Use of the techniques is normally a function of a community's interest and technical sophistication, or the availability of no-cost technical assistance from interested organizations like the Heritage Task Force. Ultimately, if a designated road is degraded, DEC may revoke the designation. This has not yet occurred. DEC does intend to re-evaluate designated roads on a periodic basis.

Since 1985 three additional nominations, all in the Hudson Valley, have been made to DEC. This time around none are in close proximity to the Hudson River. In 1988 6.1 miles were nominated in the Town of Crawford, Orange County. In 1989 DEC designated 4.1 miles, bringing the total designated miles to 83.9. In 1989 approximately 20 miles were nominated in the Town of Durham, Greene County, and another 15 miles were nominated in the nearby Town of Greeneville, Greene County. Both of these nominations are still pending. By the Fall of 1990 the Heritage Task Force expects to nominate approximately 90 miles of the Taconic State Parkway in

Columbia, Dutchess, Putnam and Westchester Counties. (SD--J contains a complete list of roads designated through August 1990.)

III. Scenic Road Protection Techniques

Protecting the integrity of scenic roads in New York involves two basic theaters of operation: (a) road maintenance, rehabilitation and improvement practices and (b) land use practices.

Road Maintenance Practices

With respect to road maintenance practices, designated scenic roads fall under the jurisdiction of either Town highway departments, County highway departments or the NYS Department of Transportation (DOT). The degree of sensitivity to scenic quality varies from department to department and is typically constrained by either (i) budget limitations and/or (ii) a traditional focus on highway capacity and safety issues.

Some departments are particularly concerned that they will be exposed to liability claims if they preserve design features which enhance scenic quality, but are thought by some to be dangerous. These features include curves, narrow pavements, stonewalls, wooden rather than metal guiderails, and roadside trees.

Concerns over the cost of building roads to the standards espoused by the American Association of State Highway and Transportation Officials (AASHTO) led to the creation in 1986 of a statewide Local Road Classification Task Force (LRCTF). There was some hope in the scenic roads community that revised standards could acknowledge the importance of scenic design features -- for both aesthetic and safety reasons. However, despite testimony seeking to demonstrate that good aesthetics does enhance safety, the LRCTF only recommended different standards for low traffic volume roads, without regard to scenic design features. The effort to establish greater respect for scenic design features may meet with more success in the future once AASHTO has published its forthcoming set of guidelines entitled "Landscape and Design Guide".

In the Hudson Valley, at the same time the 1983 nominations were prepared for DEC consideration, a set of draft "Scenic Roads Maintenance Guidelines" were also prepared. The draft was never officially adopted at either the state or the local level, at least in part due to a perception that higher maintenance costs would be required at a time of declining maintenance staff and funding levels. However, many of the recommendations were adopted by the regional office of DOT. Scenic road design recommendations regarding the use of rusting steel guiderail, roadside appurtenances, and landscaping were incorporated into rehabilitation projects. A general policy of making only the

minimum necessary geometric alterations of the alignment and roadway cross section to insure an adequate level of safety was also informally adopted. (A copy of the guidelines is available as SD--K.)

Land Use Practices

In the land use arena, there are two fundamental ways to manage land use: (1) via regulation or (2) by public acquisition of interests in land.

1. Regulatory Options.

New York is a so-called "Home Rule" state. Except in a few instances where the State has preempted particular subject matter (e.g. wetland regulation and floodplain regulation), control over land use is regulated by local city, town and village governments. These local governments may utilize a variety of techniques to protect scenic roads.

a. Rely on the Scenic Road Designation. Before a public agency may take an action it must perform an environmental review pursuant to the State Environmental Quality Review Act (a "little NEPA" statute.) Because the environmental significance of a designated scenic road has been documented, the designation can be used in the environmental review process to require project proponents to address and mitigate the impact their project will have on a scenic road.

b. Designate the Scenic Road as a Critical Environmental Area. The regulations which implement the State Environmental Quality Review Act (SEQRA) provide a means to designate special natural resource areas as "critical environmental areas" (CEAs). If a scenic road is also designated as a CEA, a more detailed level of environmental review is automatically required in connection with projects proposed along the corridor.

c. Revise the Master Plan. A municipality's master plan is the document which justifies its zoning law provisions. The master plan can be revised to include a discussion of the designated scenic road(s). The revision can take the form of either a direct amendment or can be published as a separate scenic road management plan.

d. Modify Zoning Measures. The zoning law can be modified to provide for increased minimum building setbacks, expanded lot widths, lower maximum building heights, required screening and site plan review. These can be most easily accomplished within the limits of a

"scenic overlay district" that includes the areas visible from the designated scenic road.

e. Utilize Cluster Plans. New York law allows communities to cluster all the development permissible on a project site into just one (or more) higher density corners of the site, allowing the remainder to remain as open space.

f. Create a Transfer of Development Rights Program. In areas where the scenic quality is based in part on the low density, rural character of the area, disruptive development may be avoided by establishing a system where the development capacity of the scenic lands is sold to a property owner in an area where higher densities are deemed desirable.

g. Extend Tax Incentives to Landowners. Owners of important scenic parcels sometimes sell out to developers because property taxes become too burdensome. Taxing parcels on the basis of their scenic, agricultural or open space value, rather than their so-called "highest and best use" when developed, may allow landowners to resist the temptation to cash in.

2. Acquisition Options.

When particular parcels are especially important or useful, municipalities and the State have sometimes sought to acquire them. The degree of ownership interest acquired ranges from a conservation easement to outright fee title. The costs associated with acquisition are covered in a variety of ways, including the use of State bond act funds for land acquisition, grants from private foundations, general fund monies derived from tax revenues, bargain-sale arrangements with the seller, and straight gifts or bequests from the seller or testator. Another potential mechanism for municipalities is the use of a contract with the landowner whereby over a term of years the payment of either all or a portion of the property taxes applicable to the premises would be waived with a like amount being credited against the purchase price of the property.

In all of these scenarios there is sometimes resistance to acquisition on the part of municipalities because of a perceived loss in tax ratables. For this reason conservation easements, which leave some taxable value on the underlying fee, have enjoyed some popularity.

Occasionally some important lands are acquired pursuant to a State statute which provides that in the case of

subdivisions a municipality may require that lands be set aside for parkland. In lieu of setting aside parklands, fees may be assessed by the municipality, with the proceeds dedicated to parkland purposes.

New York State has a vigorous land trust movement and occasions have arisen where land trusts have either been willing to purchase important lands (or conservation easements on lands) and hold them outright or pre-acquire lands and pass them through to the State or a municipality.

IV. Relationship to Tourism

New York's Scenic Roads Program is based on resource protection. Article 49 of the ECL makes no mention of tourism. Its focus is scenic quality protection.

In listing the goals of the Scenic Roads Program, the Scenic Roads O&D Memo mentions tourism in the context of hoped for economic benefits resulting from scenic roads protection. Tourism aspects do not enter into the evaluation criteria used to evaluate roads nominated for designation. Indeed, DEC rejected the initial classification system suggested by the Heritage Task Force with the 1983 nominations. The Class C "connector" roads were clearly designed to facilitate the development of scenic road loops or tours, but DEC determined that the integrity of the resource protection effort necessitated that only those roads demonstrating exceptional scenic quality should be designated.

For their part, many of the communities in the Hudson Valley which supported scenic road designations did so only after receiving assurances that the road, once designated, would not be incorporated in tourism promotional materials without their express prior consent. Whatever economic benefits tourism may offer has generally been outweighed by concerns about increased traffic, noise and commercialism, and the feared loss of a community's privacy. Communities do not wish to be overwhelmed by tourism.

To date no promotional maps have been prepared highlighting the scenic roads designated under Article 49. An initiative to place identifying signs on the designated roads has proceeded slowly, in part because of concerns that increased signage will increase traffic and lead to overuse. No identifying signs will be installed without prior community approval.

However, some materials published by tourism promotion agencies do mark "scenic roads" and "scenic trails" on state highway maps. This is true in the case of the State-sponsored "I Love New York" campaign. The highlighted roads do not coincide with any roads which have been officially designated as scenic pursuant to Article 49 of the ECL. (SD--L is a state map produced by the Department of Economic Development showing scenic roads of this kind.

A prominent tourism effort along the northern edge of New York is focused on is the "Seaway Trail". This is a road system, not a trail, and it connects under one name several hundred miles of roads which run near the shore of Lake Erie, Lake Ontario and the St. Lawrence River. The Seaway Trail takes advantage of the scenic beauty of the Great Lakes/St. Lawrence River shorefront to draw attention to the recreational opportunities present in that area.

It is designated in Section 342-f of the Highway Law (see SD--M) without regard to scenic quality criteria.

V. Local Scenic Roads Programs

Since 1987 an interesting new aspect has developed with respect to scenic roads in the Hudson Valley. Relying on their general "police powers" a number of municipalities have instituted their own scenic roads programs. The greatest activity has taken place in Dutchess County, aided by a coalition of citizens, public agencies and public interest groups known as the Dutchess Roadside Council.

For example, in the Town of Pawling, Dutchess County, a survey was done of the major thoroughfare, State Route 55, which was then designated as a Town Scenic Road. Presently the Town is surveying several other County and Town roads in the Town with an eye toward designation. The Town is evaluating the possibility of establishing a "Scenic Road Overlay District" in the Town zoning law to specify special standards designed to protect scenic quality. (The Town's designation resolution is available as SD-N.)

Another town in Dutchess County, the Town of Clinton, reviewed its historical maps and designated 49 roads which appeared on the Town's 1867 map. (A copy of Clinton's designating resolution is available as SD--O.)

This movement toward local designation reflects a growing awareness of the importance of scenic roads and an increasing willingness on the part of local officials to undertake responsibility for their protection. It also is an indication that in some instances localities prefer to handle resource protection themselves, rather than seek State involvement.

VI. Other State-Level Scenic Roads Initiatives

Parkways. From one perspective it can be said that New York State began its commitment to scenic roads in the early decades of this Century with the design of several parkways in the New York Metropolitan area and the Hudson Valley. These parkways -- which include the Bronx River, Taconic, Palisades and Saw Mill River Parkways -- were designed as roadways dedicated as much to recreation as to basic movement. They generally take their alignment from the form of the land and eschew the use of paved shoulders, thereby creating a more intimate scale even in a four-lane corridor. The general design principle for the Taconic State Parkway, for example, was "that the roadway should follow easy natural curves and grade, be so located conveniently to carry the large amount of traffic expected and to display to the traveler as much of its attractiveness as possible without despoiling it".

The parkway concept, however, was not formulated to respond exclusively to scenic and aesthetic concerns. Prior to the "limited access" design structure permitted for parkways, normal state highways had to allow highway access to adjacent landowners. Not until the parkway concept was enshrined in state law could land be taken for highway purposes without allowing access to adjacent landowners.

The Catskills. In 1976, after a study made in cooperation with DOT, DEC issued a report which evaluated the desirability of establishing a scenic roads program in the Catskill Park ("Toward a Scenic Roads Program for the Catskills", DEC, September 1976). The report recommended a coordinated State, county and local program focused on planning to improve land use practices along scenic highway corridors. It encouraged the development of an interconnected system of scenic roads, but noted that a tourways concept should contribute to, rather than define, the purposes of the scenic roads program. The initiative was part of a larger, quite comprehensive State assessment of resource protection needs in the Catskill region. It was abandoned when local residents perceived the overall assessment as leading up to an enlarged State government role in the region. Importantly, several years later the concept that a tourways system should contribute to, rather than define, a scenic roads program was incorporated into DEC's Scenic Roads O&D Memo (see Section II).

The Adirondacks. In the Adirondacks, arguably the State's premier natural area, no Article 49 designations have been made. Some of the Adirondack highways have been presented on State tourism maps as "scenic roads". Roads in the Adirondacks have received considerable attention, however, partly through the work of the Adirondack Highways Council, the Adirondack Park Agency and DOT. In April of 1990 the Commission on the Adirondacks in the

Twenty-First Century issued its report on the future of the Adirondacks. The report contains 245 recommendations; ten concern the protection of the scenic quality of Adirondack roads. The focus is on treating roads, trails and rivers as greenways which simultaneously demonstrate the scenic beauty of the region and tie the region together.

Seaway Trail. New York's "Seaway Trail" is described in Section IV.

Undergrounding Utilities. The Public Service Commission, a State agency with regulatory authority in utility matters, is at this writing in the midst of an important evaluation of the merits of undergrounding electric power distribution lines in zones of recognized scenic beauty. The effort includes consideration of what criteria should be applied to determine what is scenic and whether utilities should be required to underground existing lines or just future lines.

VII. Strengths and Weaknesses of the State Scenic Roads Program

A fundamental strength of the State Scenic Roads Program lies in its "bottom up" approach. By definition this reliance on local approval and local post-designation land use management incorporates respect for the "home rule" authority of New York's municipalities. Since municipalities generally dislike being dictated to by the State, the structure of the Scenic Roads Program is appealing. It does not force a designation on a community and it does not impose regulations after designation. Instead it encourages localities to recognize their scenic resources, document them, and then, with the prestige of statewide recognition, determine how they wish to protect them. Even if a community does not choose to follow up a designation with additional protection measures, interested local citizens can refer to the designation in the course of project reviews to ensure that full consideration is given to environmental impacts.

A second fundamental strength of the program is its emphasis on resource protection. There is some difficulty involved in evaluating scenic quality, but if the purpose of a designation is to foster resource protection by giving State recognition to a significant scenic resource, then the evaluation effort is focused and there is an opportunity for consistency. If, on the other hand, the goal is to establish a tourism "tourway" or to protect a particular landscape from a specific development threat, then the desire to achieve those other goals can cloud the evaluation effort and undermine program consistency.

The program also does a good job of accomplishing its goal of promoting awareness and appreciation of scenic resources. The process is designed to build upon the participation of local citizens, both in documenting the scenic resource and in persuading local government officials to endorse a nomination. The citizens and officials gain awareness and appreciation from the process, and experience has shown that the citizens then function as watchdogs for the resource, reminding both public officials and project proponents that their actions must be consistent with preserving the integrity of the designated resource.

One of the weaknesses of the State Scenic Roads Program is that it does not have a terribly high public profile. To date it is limited to the Hudson Valley. There is, however, a growing body of explanatory material available which addresses both the State Scenic Roads Program specifically and the general concept of scenic quality along road corridors. See for example, SD--P "Scenic Roads Handbook" (Heritage Task Force, 1985), SD--Q "Roadscape Guidelines" (Dutchess Roadside Council, 1989), SD--R "Scenic Road Management Guidelines" (Town of Rhinebeck, March 1990) and SD--S "Scenic Roads

-- Getting There Can Be Part of the Fun" (Michael Barylski, DEC, in "The Conservationist", September-October 1989). These materials are supplemented by an introductory slide show produced by DEC.

Nevertheless, DEC has had only one staff person assigned -- on a part-time basis -- to the program and many local governments and State agencies throughout New York remain unaware of it. The situation is better in the Hudson Valley where a number of entities (the Heritage Task Force, county planning departments, Scenic Hudson, Inc., etc.) actively promote the program.

One school of thought categorizes the program's lack of express regulatory teeth as a weakness. This nation has grown used to the necessity of strong regulatory programs in many areas of government, including environmental matters, and so it is almost surprising to have a State designation unaccompanied by regulatory controls. However, several considerations militate against such an approach in the context of scenic roads. First, fiscal limitations prohibit the establishment of a statewide bureaucracy dedicated to the Scenic Roads Program. Second, many aspects of the program are land use related and there is local resistance to State usurpation of local home rule jurisdiction. Finally, the program as structured is designed to shift the day-to-day business of scenic road protection to the localities where the roads are located, and the initial response is encouraging. Perhaps this kind of program approach would not work for a rivers protection effort, where relatively few people actually get out on the resource, but it is appropriate for scenic roads because virtually everybody in a given locality frequently travels the roads. They engage them almost constantly. Because of this much has been accomplished at a very modest cost. In the Hudson Valley there is even the growing phenomenon of local scenic roads programs (see Section V). It seems too early in the State program to retreat to a strong State regulatory posture.

Several matters concerning scenic roads certainly need improvement: (i) allocation of greater funding to support initial nomination studies; (ii) development of scenic roads maintenance guidelines; (iii) resolution of liability concerns; and (iv) coordination with other state programs relating to scenic roads.

Municipalities and counties ordinarily do not have funds available for nomination studies. The Heritage Task Force has offered modest grants, but they are limited to Hudson Valley roads.

The development of maintenance guidelines and the resolution of liability issues should proceed together because they are linked to one another on several levels. It seems clear that scenic roads can in fact be as safe as -- and often safer -- than commonplace "engineered" roads, but more work needs to be done to establish this relationship. The forthcoming publication of AASHTO's

"Landscape and Design Guide" should provide firmer footing for this important effort.

As to programmatic coordination, there is an existing and worsening problem. The term "scenic road" is being used too loosely, creating confusion among agencies and the public, and undermining potentially significant resource protection advances. It would be best if the term "scenic road" were applied to roads identified for scenic resource protection purposes. Highways identified for tourism purposes should receive a distinct label of their own, perhaps "tourways". It also seems desirable to avoid labeling vehicular roads as "trails" -- in order to avoid confusion with actual (pedestrian) trails like the Appalachian Trail.

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